

AMENDED IN SENATE AUGUST 7, 2000
AMENDED IN ASSEMBLY MAY 31, 2000
AMENDED IN ASSEMBLY MAY 16, 2000
AMENDED IN ASSEMBLY APRIL 24, 2000
AMENDED IN ASSEMBLY APRIL 3, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2107

Introduced by Assembly Member Scott

February 22, 2000

An act to *add Section 6177 to the Business and Professions Code, and to amend Sections 10193 and and renumber Section 10193 of, to amend Section 10234.8 of, and to add Sections 789.8 and 789.9 Section 789.8 to, the Insurance Code, and to amend Section 15610.30 of the Welfare and Institutions Code, relating to elder abuse.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2107, as amended, Scott. Elder abuse.

(1) Existing law imposes on all insurers, brokers, agents, and others engaged in the business of Medicare supplemental insurance and long-term care insurance with a policyholder, a duty of honesty, good faith, and fair dealing.

This bill would impose the duty of honesty, good faith, and fair dealing on insurers, brokers, agents, and others engaged in the business of Medicare supplemental insurance and long-term care insurance with respect to prospective

policyholders. The bill would only permit life agents to sell or offer for sale to an elder or his or her agent any financial product on the basis of the product's treatment under Medi-Cal after ~~making specified disclosures—providing the elder or his or her agent with a specified disclosure, in writing, explaining the resource and income requirements of the Medi-Cal program including, but not limited to, certain exempt resources, certain protections against spousal impoverishment, and certain circumstances under which an interest in a home may be transferred without affecting Medi-Cal eligibility.~~

(2) Existing law prohibits conflicts of interest between an attorney and client.

~~This bill would prohibit a financial services agent, as specified, from entering into a compensated referral arrangement with a lawyer who offers legal services to that agent's client or agent. This bill would prohibit a lawyer from entering into a compensated referral arrangement with a financial services agent, as specified—require the State Bar to make a report, by December 31 of each year, to the Legislature on the provision of financial services by lawyers to elders. The report on financial services to elders would include, but not limited to, the number of complaints received, investigations pending, the number and nature of disciplinary actions initiated by the State Bar, and the number of attorneys in violation of the law.~~

(3) Existing law defines financial abuse for the purpose of reporting and investigating elder and dependent adult abuse.

This bill would revise that definition.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6177 is added to the Business and
- 2 Professions Code, to read:
- 3 6177. The State Bar by December 31 of each year shall
- 4 report to the Legislature on the provision of financial
- 5 services by lawyers to elders. This report shall include, but
- 6 not be limited to, the following information related to

financial services to elders: the number of complaints received by the State Bar; the number of investigations pending and completed, the number and nature of disciplinary actions initiated by the State Bar; the number of attorneys found in violation of Article 10.5 (commencing with Section 6175) of Chapter 4 of Division 3 of the Business and Professions Code pursuant to court action and any other relevant information.

SEC. 2. Section 789.8 is added to the Insurance Code, to read:

789.8. (a) “Elder” for purposes of this section means any person residing in this state, 65 years of age or older.

(b) ~~The~~ *If a life agent offers to sell to an elder any life insurance or annuity product, the life agent shall advise an elder or elder’s agent orally and in writing that the sale or liquidation of any stock, bond, IRA, certificate of deposit, mutual fund, annuity, or other asset to fund the purchase of this product may have tax consequences, early withdrawal penalties, or other costs or penalties as a result of the sale or liquidation, and that the elder or elder’s agent may wish to consult independent legal or financial advice before selling or liquidating any assets and prior to the purchase of any life or annuity products being solicited, offered for sale, or sold.*

(c) ~~The life agent may not~~ *A life agent who offers for sale or sells financial products on the basis of qualification for the Medi-Cal program may not negligently misrepresent the treatment of any asset under the statutes and rules and regulations of the Medi-Cal program, as it pertains to the determination of eligibility for any program of public assistance.*

(d) ~~The life agent may not offer for sale or sell any financial product on the basis of the product’s treatment under the Medi-Cal program without first fully disclosing to the elder or the elder’s agent the treatment under the statutes and rules and regulations of the Medi-Cal program in effect at the time of the sale of any assets used to purchase, or any assets liquidated in order to purchase, the financial product. The disclosure shall include, but is not limited to, the treatment of the home, community~~

~~1 spouse resource allowance, community minimum
2 monthly maintenance need allowance, pensions, and
3 IRAs. The disclosure shall also include whether income,
4 if any, generated by the financial product will affect the
5 share of cost for Medi-Cal, and whether, after the elder's
6 death, the remainder interest, if any, will be subject to
7 estate recovery under the rules and regulations and
8 statutes in effect at the time of the sale.~~

*(d) A life agent who offers for sale or sells any financial
product on the basis of its treatment under the Medi-Cal
program shall provide, in writing, the following
disclosure to the elder or the elder's agent:*

**“NOTICE REGARDING STANDARDS FOR
MEDI-CAL ELIGIBILITY**

*If you or your spouse are considering purchasing a
financial product based on its treatment under the
Medi-Cal program, read this important message!*

*You or your spouse do not have to use up all of your
savings before applying for Medi-Cal.*

UNMARRIED RESIDENT

*An unmarried resident may be eligible for Medi-Cal
benefits if he or she has less than (insert amount of
individual's resource allowance) in countable resources.*

*The Medi-Cal recipient is allowed to keep from his or
her monthly income a personal allowance of (insert
amount of personal needs allowance) plus the amount of
any health insurance premiums paid. The remainder of
the monthly income is paid to the nursing facility as a
monthly share of cost.*

MARRIED RESIDENT

COMMUNITY SPOUSE RESOURCE ALLOWANCE:
*If one spouse lives in a nursing facility, and the other
spouse does not live in a facility, the Medi-Cal program
will pay some or all of the nursing facility costs as long as*

1 *the couple together does not have more than (insert*
2 *amount of community countable assets).*

3 **MINIMUM MONTHLY MAINTENANCE NEEDS**
4 **ALLOWANCE:** *If a spouse is eligible for Medi-Cal*
5 *payment of nursing facility costs, the spouse living at*
6 *home is allowed to keep a monthly income of at least his*
7 *or her individual monthly income or (insert amount of*
8 *the minimum monthly maintenance needs allowance),*
9 *whichever is greater.*

10
11 **FAIR HEARINGS AND COURT ORDERS**
12

13 *Under certain circumstances, an at-home spouse can*
14 *obtain an order from an administrative law judge or court*
15 *that will allow the at-home spouse to retain additional*
16 *resources or income. The order may allow the couple to*
17 *retain more than (insert amount of community spouse*
18 *resource allowance plus individual's resource allowance)*
19 *in countable resources. The order also may allow the*
20 *at-home spouse to retain more than (insert amount of the*
21 *monthly maintenance need allowance) in monthly*
22 *income.*

23
24 **REAL AND PERSONAL PROPERTY EXEMPTIONS**
25

26 *Many of your assets may already be exempt. Exempt*
27 *means that the assets are not counted when determining*
28 *eligibility for Medi-Cal.*

29
30 **REAL PROPERTY EXEMPTIONS**
31

32 **ONE PRINCIPAL RESIDENCE.**

33 *One property used as a home is exempt. The home will*
34 *remain exempt in determining eligibility if the applicant*
35 *intends to return home someday.*

36 *The home also continues to be exempt if the applicant's*
37 *spouse or dependent relative continues to live in it.*

38 *Money received from the sale of a home can be exempt*
39 *for up to six months if the money is going to be used for*
40 *the purchase of another home.*

1 REAL PROPERTY USED IN A BUSINESS OR
2 TRADE.

3 Real estate used in a trade or business is exempt
4 regardless of its equity value and whether it produces
5 income.

6

7 PERSONAL PROPERTY AND OTHER EXEMPT
8 ASSETS

9

10 IRAs, KEOGHs, AND OTHER WORK-RELATED
11 PENSION PLANS. These funds are exempt if the family
12 member whose name it is in does not want Medi-Cal. If
13 held in the name of a person who wants Medi-Cal and
14 payments of principal and interest are being received,
15 the balance is considered unavailable and is not counted.
16 It is not necessary to annuitize, convert to an annuity, or
17 otherwise change the form of the assets in order for them
18 to be unavailable.

19 PERSONAL PROPERTY USED IN A TRADE OR
20 BUSINESS.

21 ONE MOTOR VEHICLE.

22 IRREVOCABLE BURIAL TRUSTS OR
23 IRREVOCABLE PREPAID BURIAL CONTRACTS.

24 THERE MAY BE OTHER ASSETS THAT MAY BE
25 EXEMPT.

26

27 This is only a brief description of the Medi-Cal
28 eligibility rules, for more detailed information, you should
29 call your county welfare department. Also, you are
30 advised to contact a legal services program for seniors or
31 an attorney that is not connected with the sale of this
32 product.

33

34 I have read the above notice and have received a copy.

35 Dated: _____ Signature:

36 _____”

37

38 The statement required in this subdivision shall be
39 printed in at least 12-point type, shall be clearly separate
40 from any other document or writing, and shall be signed



1 by the prospective purchaser and that person's spouse,
2 and legal representative, if any.

3 (e) The State Department of Health Services shall
4 update this form to ensure consistency with state and
5 federal law and make the disclosure available to agents
6 and brokers through its Internet website.

7 (f) Nothing in this section allows or is intended to allow
8 the unlawful practice of law.

9 ~~SEC. 2. Section 789.9 is added to the Insurance Code,~~
10 ~~to read:~~

11 ~~789.9. A financial services agent, including, but not~~
12 ~~limited to, an insurance agent or broker, mortgage~~
13 ~~broker, real estate broker, or securities broker, may not~~
14 ~~enter into a compensated referral arrangement with any~~
15 ~~lawyer who offers legal services to that agent's client or~~
16 ~~agent. A lawyer shall not enter into a compensated~~
17 ~~referral arrangement with a financial services agent,~~
18 ~~including, but not limited to, an insurance agent or~~
19 ~~broker, mortgage broker, real estate broker, or securities~~
20 ~~broker who offers financial services to that lawyer's~~
21 ~~client.~~

22 SEC. 3. Section 10193 of the Insurance Code is
23 amended *and renumbered* to read:

24 ~~10193.—~~

25 10192.55. (a) With regard to Medicare supplement
26 insurance, all insurers, brokers, agents, and others
27 engaged in the business of insurance owe a policyholder
28 or a prospective policyholder a duty of honesty, and a
29 duty of good faith and fair dealing.

30 (b) Conduct of an insurer, broker, or agent during the
31 offer and sale of a policy previous to the purchase is
32 relevant to any action alleging a breach of the duty of
33 honesty, and a duty of good faith and fair dealing.

34 SEC. 4. Section 10234.8 of the Insurance Code is
35 amended to read:

36 10234.8. (a) With regard to long-term care
37 insurance, all insurers, brokers, agents, and others
38 engaged in the business of insurance owe a policyholder
39 or a prospective policyholder a duty of honesty, and a
40 duty of good faith and fair dealing.

(b) Conduct of an insurer, broker, or agent during the offer and sale of a policy previous to the purchase is relevant to any action alleging a breach of the duty of honesty, and a duty of good faith and fair dealing.

SEC. 5. Section 15610.30 of the Welfare and Institutions Code is amended to read:

15610.30. (a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, ~~or appropriates~~ appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, ~~or appropriating~~ appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith.

(1) A person or entity shall be deemed to have acted in bad faith if the person or entity knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his or her representative.

(2) For purposes of this section, a person or entity should have known of a right specified in paragraph (1) if, on the basis of the information received by the person or entity or the person or entity’s representative, or both, it is obvious to a reasonable person that the elder or dependent adult has a right specified in paragraph (1).

(c) For purposes of this section, “representative” means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

1 (2) An attorney-in-fact of an elder or dependent adult
2 who acts within the authority of the power of attorney.

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